

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

FAMILY FARE, INC. d/b/a GLEN'S MARKET¹

Employer

and

CASE 7-RC-22118

**LOCAL 876, UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION, AFL-CIO**

Petitioner

APPEARANCES:

Michael A. Snapper, Attorney, of Grand Rapids, Michigan, for the Employer
David R. Radtke, Attorney, of Southfield, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name appears as corrected at the hearing.

² Both parties submitted briefs, which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer operates 56 retail grocery stores belonging to the Spartan Store network in northern and western Michigan. The facility at issue is in Oscoda. The parties stipulated to the appropriateness of a wall-to-wall unit excluding supervisors, managers in training, seasonal employees, and guards. The question for resolution is the eligibility of seven department managers -- Customer Services Manager Mary Pratt, Grocery Manager Jay McGuire, Meat Manager Chuck Burnett, Deli Manager Vicki Doran, Bakery Manager Matt Kovachevich, Produce Manager Carol Toppi, and the night stock manager, a position currently unfilled. The Employer contends, contrary to the Petitioner, that these individuals are statutory supervisors and therefore ineligible to vote.

The Oscoda store is headed by Store Director Karen Gonzler. Assistant Store Directors Mark Kovachevich, John Terbrack, and Mark Crooks report directly to Gonzler, as does Customer Services Manager Mary Pratt.³ All other department managers report to one of the three assistant store directors.⁴ Store Director Gonzler answers to Spartan Regional District Manager Richard Creuger and frequently consults with Spartan Regional Human Resources Manager Keith Hansen.

There are about 57 undisputed bargaining unit employees. Customer services, handling what is known as the front end of the store, is by far the largest department, employing 31 workers in such positions as cashier and service clerk (i.e., bagger). The remaining departments have much smaller staffs: night stock

³ The parties stipulated, and I concur, that Gonzler, Mark Kovachevich, Terbrack, and Crooks are supervisors within the meaning of Section 2(11) of the Act by virtue of their authority to hire, discipline, and reward employees. Based on the evidence that the dairy, frozen food, and general merchandise departments have no employees, and the lack of evidence that the managers of those departments possess supervisory authority, I accept the parties' further stipulation that Dairy Manager Doug Witkovsky, Frozen Manager Roxanne Somers, and General Merchandise Manager Joann Smithy are employees encompassed by the stipulated unit.

⁴ Assistant Store Director Mark Kovachevich oversees grocery and night stock; John Terbrack heads dairy, frozen foods, meat, and general merchandise; and Mark Crooks supervises deli, bakery, and produce.

and deli (seven employees each); meat and bakery (five each); produce and grocery (one each).

Department managers are responsible for the smooth operation of their respective departments. They place product orders, decide which products to mark down when, oversee and schedule their staff, perform inventories, and prepare records of expenses and sales. The record does not address what percentage of their time is devoted to manual labor, but suggests that they perform such work as needed.

Department managers meet weekly with Store Director Gonzler to review sales, professional shopping reports, advertising, and other concerns. At this meeting, Gonzler gives most department managers an allotted number of labor hours to be distributed among the department's staff. A department manager's request for additional hours is usually granted. The department managers then devise a weekly schedule for their employees.⁵ They are guided by the caveat that no employee may be scheduled for overtime without approval of upper management. The schedules are submitted for review to the store director, who, according to one department manager, modifies them 25 to 50 percent of the time.

Employees may obtain changes in their assigned schedule by submitting a time-off request form to the department manager, whose signature on the form constitutes final approval. An employee handbook states at section 2.0 that granting a schedule change or special time off is based upon the nature or purpose of the application, the employee's previous attendance history, how often the employee makes such requests, and how far in advance the request is made. Although the handbook thus implies that time-off requests are subjected to careful weighing, the store director testified that department managers grant 99 percent of them. Employees are entitled to amounts of paid vacation based upon seniority as established by corporate human resources personnel. There is no record evidence of what rules, if any, department managers must follow when scheduling employees' accrued vacation times.

Absent employees are required to notify their department manager or higher management. Department managers have a duty to report incidents of "no-call-no-show," two consecutive days of which is automatically treated as a voluntary quit. There was testimony that a department manager might plead for special waiver in the case of a senior, valued employee. However, no evidence was adduced that the Employer has informed department managers of this possibility or that any department manager has explored it. Official attendance

⁵ The exceptions are the grocery and night stock managers, whose workers are scheduled by an assistant store director.

records are maintained not by department managers but by the store director, assistant store directors, and payroll personnel.⁶

The Employer presented testimony that department managers may approve overtime when an emergency arises. No examples were adduced. A department manager testified that in exigent circumstances, either people in his department agree to work harder, or he invites staff to stay later or arrive earlier. There is no record evidence as to whether department managers merely request or have authority to compel employees to work solicited overtime.

Department managers may accommodate each other by collaboratively effecting temporary inter-department transfers. No further approval is required for these consensual transfers. There is evidence that the store director may unilaterally mandate a temporary transfer, but none as to whether department managers may also do so.

The Employer uses a progressive disciplinary system ending in discharge for “just cause.” Repeated minor offenses move through the stages of counseling, verbal prompter, written prompter, decision-making day,⁷ and suspension. Discipline for serious infractions may bypass these steps. The employee handbook contains illustrative, not exhaustive, lists of what the Employer considers minor and major violations. It also explicitly quantifies what constitutes “excessive” absenteeism or tardiness. The Employer uses a form called Positive Reinforcement Memo that calls for a narrative description and a check mark designating the level of punishment, from counseling through suspension, being issued. The Positive Reinforcement Memo has signature lines for the store director, the disciplined employee, and a witness. A different form, containing lines for the same three signatories, is prepared in the case of employment separation.

Department managers encountering disciplinary problems often report them to the store director. When discipline does not involve time off, the department manager may also prepare a Positive Reinforcement Memo. No evidence was presented as to how often, if ever, lower-level discipline originated by department managers is countermanded by higher authority. The Employer introduced five Positive Reinforcement Memos in the counseling and prompter categories, citing failure to check the identification card of a customer purchasing alcohol, retail fraud, no-call-no-show, rudeness to a customer, and failure to supply a doctor’s

⁶ The record is silent as to the location of the Oscoda store’s payroll personnel.

⁷ A decision-making day is a paid day off to enable the employee to either contemplate and correct his performance problem or resign.

note to support an absence. Most of these reprimands were prepared by the department managers, whose names appeared on the witness lines.⁸ Several of the memos warned that the next disciplinary step would be a decision-making day. The recent ones were approved for issuance as reflected by the signatures on the store director's line.

When time off or job loss is being considered, a department manager may not act unilaterally but instead brings the problem to the store director's attention. The store director investigates the situation by conferring with the employee. Before issuing discipline, the store director also consults with a corporate human resources manager in cases of suspension and with the corporate regional district manager in cases of discharge. Two discharge recommendations made by Customer Services Manager Mary Pratt resulted in dismissals. The percentage, if any, of unapproved discharge recommendations by Pratt and other disputed managers was not disclosed.

Job interviews for unit employees are conducted by assistant store directors, who, it appears, also make the hiring decisions. A department manager may attend an interview to offer assessment of the applicant's skills. Scant evidence was adduced concerning department managers' hiring recommendations. Customer Services Manager Mary Pratt "pre-screens" about 90 percent of the written job application forms, as does Grocery Manager Jay McGuire to a limited extent.⁹ Pre-screening is said to result in a winnowing of the applicant pool. However, the record fails to indicate the criteria by which applications are rejected at the pre-screening stage, other than ascertaining that the application form has been completed. Department managers have no input into the staffing levels of their respective departments.

Five of the seven disputed department managers evaluate new employees at three and six months, and then every six months thereafter. The exceptions are the grocery and night stock managers, whose employees are evaluated by assistant store directors. The evaluation form elicits a rating of 0 through 10 in 24 categories of job performance and personal skills. It also calls for a narrative. The individual ratings are averaged, and an overall rating of unacceptable, poor, average/good, very good, or excellent is assigned. Each of the five overall rating groups corresponds to either wage stasis or a wage increase in an amount

⁸ One particular memo shows Customer Services Manager Mary Pratt's signature as witness, but it is plain by comparing styles of handwriting that she did not prepare it. (Employer Exhibit 40)

⁹ The Employer states in its brief that Pratt's percentage is 50, but the transcript says 90. (Tr 167) Neither party has moved to correct the transcript. It is suggested that McGuire's pre-screening 25 to 40 applications yearly does not match Pratt's role in this regard. This is difficult to assess because the record does not include the total number of applications submitted yearly.

determined by corporate human resources officials. The exact raise associated with a given rating group may not be known to the department manager at the time he prepares the evaluation. Once human resources arrives at a standard formula, no factor other than the overall rating assigned by the department manager normally determines an employee's eligibility for a six-month raise or its size. The only exception is when the store director modifies an evaluation, a rare event estimated to occur one percent of the time.¹⁰

Infrequently, an employee may receive an unscheduled merit increase independent of the evaluation process. There is no signature line for the department manager on the current Personnel Action Request form used to effect this kind of raise. The record contains evidence of only one such raise. It was granted this year to an employee who made the request on his own to Store Director Gonzler, who notified Meat Manager Chuck Burnett before making the final decision herself. Two years earlier, Burnett had recommended to no avail that the raise be given.

The Employer's human resources department determines and adjusts wage ranges for each job classification. There is no evidence that department managers have a role in either formulating the range or selecting a specific starting wage within the range for new hires. Promotions to the jobs of seafood specialist and office specialist have occurred following endorsement by, respectively, the meat and customer service department managers. Department managers also make recommendations regarding assistant department manager jobs. The Employer predicts that such a promotion will take place in the future in the deli department. The record is barren of evidence, however, as to what weight is given to the department managers' recommendations and whether promotion candidates are independently evaluated or interviewed by higher management.

Department managers give daily task instructions to the employees in their charge. Although Store Director Gonzler testified that department managers' instructions vary from day to day, she did not explain how or why, or state what latitude department managers may have. The only concrete example of work direction introduced at the hearing was Grocery Manager Jay McGuire's written instructions to the night crew to, inter alia, run back stock, straighten the back room, and tag pallets.¹¹

¹⁰ The foregoing evidence regarding evaluations and concomitant wage increases was uncontradicted. The record does not reveal, however, any details about the size of raises. Nor does it shed light on whether unacceptable and poor ratings always mean the denial of a raise, as implied by one exhibit in which the employee was rated "poor" and the department manager's narrative stated that a raise was being denied.

¹¹ In cross examination, Gonzler agreed to opposing counsel's characterization of the direction given by department managers as "routine." On redirect, she testified that by "routine" she meant a function undertaken daily.

The employee handbook sets forth an in-house grievance system called Fair Treatment Procedure. Appeal to the department manager is the initial stage. If an employee remains aggrieved, he presents the problem sequentially to the store director, regional district manager, and human resources vice president. There is no record evidence about use of the procedure.

All undisputed unit employees are paid hourly and punch a time clock. The department managers in bakery, deli, grocery, meat, and customer services are salaried, although they have the option to be paid hourly. Their compensation, if converted to an hourly rate, exceeds that of their respective underlings by margins of at least \$1 to more than double. The produce manager receives an hourly wage four dollars greater than her single staff employee. The most recent night stock manager was paid hourly at a rate less than that of two subordinate employees.

All individuals receive the same holiday and vacation benefits, as well as the same health insurance, §401(k) plan, and long-term disability plan. Salaried managers are eligible for bonus pay, while hourly workers may qualify for bonus hours. Certain fringe benefit plans, such as life insurance and short-term disability, vary depending upon whether the individual is salaried or hourly.

The store and assistant store directors occupy locking offices upstairs from the selling floor. Department managers work downstairs on the selling floor in their respective work areas and at desks. They are not given keys to the upstairs offices, nor do they have access to employees' personnel files, as store and assistant store directors do.

The supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the listed authorities can invest the individual with supervisory status. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). To separate straw bosses from true supervisors, the Act prescribes that the exercise of supervisory indicia be in the interest of the employer and require the use of independent judgment. This means that neither the discharge of Section 2(11) functions in a routine and clerical manner, nor the use of independent judgment to solve problems unrelated to Section 2(11) functions, qualifies as supervisory. *Alois Box Co.*, 326 NLRB 1177 (1998).

The burden of proof rests with the party seeking to exclude an individual as a supervisor. *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999); *Bennett Industries*, 313 NLRB 1363 (1994). The Board is mindful not to deprive

employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB No. 58, slip op. at 8 (Aug. 27, 2001) (JD). Job titles, or the lack of them, are not determinative. *Davis Supermarkets*, 306 NLRB 4266, 458 (1992), enfd. 2 F.3d 1162 (D.C. Cir. 1993), cert. denied 511 U.S. 1003 (1994).

The care taken to distinguish work leaders from genuine supervisors is evident in *Azusa Ranch Market*, 321 NLRB 811 (1996), a representation proceeding involving the status of two key carriers and a liquor manager. The evidence showed that those individuals gave employees daily work instructions, scheduled breaks every two hours based upon business needs, made job reassignments, sent employees home early and granted time-off requests, provided input into employees' progress, reported performance problems to management, and issued written warnings on their own. One served as the sole head of the store four evenings per week when the general manager was gone. The individuals were nonetheless found to be employees because their actions were those of experienced, trusted leaders and did not involve independent judgment. Similarly, a head cashier in *Mack's Supermarkets*, 288 NLRB 1082 (1988) who trained and scheduled other cashiers, received and acted upon time-off requests, and revised schedules to accommodate employees' leave, was deemed an employee due to the routine nature of her work.

While the department managers here have responsibility to schedule and act upon leave requests, they do so within relatively fixed parameters established by the Employer regarding maximum labor hours and leave entitlements. This militates against a finding of independent judgment. *Dico Tire*, 330 NLRB No. 177, slip op. at 2 (Apr. 17, 2000). That most absence requests are approved also implies that the scope of discretion accorded to department managers is clerical. *L. Suzio Concrete Co.*, 325 NLRB 392, 398 (1998), enfd. 173 F.3d 844 (2nd Cir. 1999).

There is some evidence that department managers have successfully recommended employees for promotion. Those instances appear isolated, and it is unclear how dispositive the recommendations were of the outcome. The record is also uncertain as to how often or why department managers attend hiring interviews. In fact, no evidence of specific hiring recommendations was introduced, other than an account of Meat Manager Burnett having agreed to the hiring of an employee because another whom he favored was not available as soon. Consultation with Burnett regarding hiring and promotion, such as when to convert a meat department employee to journeyman meat-cutter status, reflects deference to Burnett's technical knowledge, not delegation of supervisory authority. *Aardvark Post*, 331 NLRB No. 41, slip op. at 2 (June 13, 2000).

The record does not permit a supervisory finding based upon certain department managers' participation in the pre-screening stage of the hiring process. Actual interviews are conducted and hiring decisions are made by store directors. Significantly, there is no evidence as to the grounds on which department managers may reject candidates. Pre-screening therefore may not be considered equivalent to a refusal to hire, or an effective recommendation to hire, devolving from the use of independent judgment. Rather, the role of pre-screeners appears to be a ministerial one of weeding out those obviously unqualified based on objective Employer standards. *Operating Engineers Local 3*, 324 NLRB 1183, 1187 (1997). Compare *Fred Meyer Alaska*, 334 NLRB No. 94, slip op. at 4 (July 19, 2001) (meat and seafood managers using independent judgment in hiring are supervisors).

The employee handbook's Fair Treatment Procedure implies that department managers have the authority to adjust employee grievances at the initial appeal level. This may impart supervisory status. *Koronis Parts*, 324 NLRB 675 (1997). However, the lack of any record evidence regarding how, if ever, this system is utilized makes this paper authority a tenuous basis for a supervisory finding.

Department managers instruct employees as to their daily tasks. However, as stated by the Fifth Circuit in *NLRB v. Security Guard Service*, 384 F.2d 143, 150 (5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.

Like the Board in *Azusa Ranch Market*, supra, I find that the direction supplied by department managers is routine in nature. Although particular job assignments may vary from day to day, choosing them demands a department manager's adherence to normal retail and prescribed store procedures, not the use of independent judgment as contemplated by Congress.

When performance evaluations are linked to pay raises, the authority to complete them constitutes an effective recommendation for a wage increase and thus satisfies a statutory supervisory indicium. *Bethany Medical Center*, 328 NLRB No. 161 (Aug. 3, 1999); *El-Tech Research Corp.*, 300 NLRB 522 (1990). When the evaluation is not a direct or systematic element of a wage decision, the evaluator is not a supervisor. *Hausner Hard-Chrome of Kentucky*, 326 NLRB 426, 427 (1998). Factors affecting the analysis include how frequently the

evaluator's rating is modified by upper management, whether the evaluation is a collaborative process, the weight given to the evaluator's judgments, and whether performance considerations other than those reflected in the evaluation are taken into account. *Ten Broeck Commons*, 320 NLRB 806, 813 (1996).

I find that the evaluations regularly issued by Customer Services Manager Pratt, Meat Manager Burnett, Deli Manager Doran, Bakery Manager Kovachevich, and Produce Manager Toppi are sufficient to render them supervisors. They complete the forms on their own. Their ratings are seldom disturbed. Although upper-level management decides the financial value of each overall rating, the independent assessment of an individual employee's progress and performance rendered by the department managers just noted determines how the employee will fare under the given reward system. An evaluation program almost identical to the one at issue was the basis of a supervisory finding in *Bayou Manor Health Center*, 311 NLRB 955 (1993). A similar program yielded a like result in *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995).¹²

For most of his work hours, Grocery Manager Jay McGuire oversees one employee. Although supervisory status may be found based upon supervision of only one employee, *American Crane Corp.*, 326 NLRB 1401, 1404 (1998); *Jack Holland & Son*, 237 NLRB 263, 265 (1978), McGuire does not evaluate or schedule that employee or any other. There is no specific evidence that McGuire disciplines employees. The Employer notes that the grocery manager is responsible for the area of the store that accounts for almost one-half of all sales.

The Employer urges that McGuire is a supervisor in part because of his participation in pre-screening job applications and his direction of the night crew. For the reasons stated above, I find neither argument persuasive of supervisory status. Nor are his attendance at management meetings, choice of salaried status, and eligibility for the salaried bonus plan sufficient bases alone. *General Security Services*, 326 NLRB 312 (1998), *enfd.* 187 F.3d 629 (8th Cir. 1999) (secondary indicia of supervisory status not dispositive); *Juniper Industries*, 311 NLRB 109, 110 (1993) (same).

The Employer argues also that McGuire is a supervisor because he is the "person-in-charge" of the entire store about twice weekly, usually from 5:00 p.m. to 10:00 p.m., when higher-level management and most other department

¹² This conclusion makes moot a discussion of whether these department managers are supervisors on the additional basis of their authority to issue lower-level discipline. Ideally, the record would have been more complete in this regard by disclosing what reliance is given by the store director, when making suspension and discharge decisions, upon any prior record of counseling and prompts issued by the employee's department manager. *Passavant Health Center*, 284 NLRB 887, 889 (1987) (reportorial and didactic function of claimed supervisor does not amount to statutory supervision).

managers have left for the evening. McGuire's service as the person-in-charge ends at 10:00 p.m. when the assistant store director substituting for the night stock manager arrives. The record suggests that other department managers may, and Customer Services Manager Mary Pratt regularly does, accompany McGuire at work for a couple of hours between 5:00 p.m. and 10:00 p.m. No extra remuneration is paid McGuire as the person-in-charge.

Even if McGuire is the only on-site official for a limited period from time to time, taking charge does not necessarily imply supervisory authority. First, the Act demands that supervisory substitution be more than sporadic. *Aladdin Hotel*, 270 NLRB 838 (1984). Second, the Act requires proof that the individual is authorized while in charge to use independent judgment in carrying out at least one of the statutory supervisor indicia. Many grocery store cases illustrate the latter point. In *Azusa Ranch Market*, supra, a putative supervisor was denied that status even though he was the highest on-site individual four nights every week. A produce manager who was solely in charge twice weekly was also not deemed a supervisor. *Smitty's Foods*, 201 NLRB 283, 285-286 (1973). Even grocery department managers left in charge several hours every evening were not classified as statutory supervisors. *Footie's Dixie Dandy*, 223 NLRB 1363 (1976).

Store Director Gonzler testified that McGuire is expected to handle all problems that arise when he is in charge. The only example Gonzler mentioned was McGuire's instructing an employee to perform the routine task of replenishing milk shelves. Gonzler cited employee injury, theft, and customer altercation as events that *could* occur on McGuire's watch. However, the ideas remained defectively speculative; no evidence was adduced to illustrate McGuire's actual handling of those or like problems as the person-in-charge. *General Security Services*, supra (responses to how hypothetical problems might be handled is not enough to establish supervisory status). Nor does the record suggest in general terms how unilaterally or independently McGuire may act while serving as person-in-charge. For instance, it is unknown whether he would deal with a crisis by telephoning or summoning Gonzler or an assistant store director or how final his personnel decisions as person-in-charge would be.

The state of the record precludes a determination at this point of McGuire's supervisory status based upon his twice-weekly stints as person-in-charge. He may therefore vote under challenge.

When the position is filled, the night stock manager is responsible for a crew of seven workers from about 10:00 p.m. to 7:00 a.m., during which time no other manager is present. The night stock manager does not evaluate or schedule employees, nor is there evidence that he is empowered to discipline them. To the extent that the Employer contends that the night stock manager is a supervisor by

virtue of being in charge overnight, the same evidentiary infirmities discussed above in connection with Grocery Manager McGuire apply. Virtually all of the other bases urged by the Employer for considering the night stock manager to be a supervisor have been rejected. The person who most recently occupied the position earned less than two of his underlings. I find that the Employer has not met its burden to prove that the night stock manager job is supervisory.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time clerks, cashiers, meat cutters, department specialists, and courtesy clerks employed by the Employer at its facility located at 5463 North Huron Road, Oscoda, Michigan; but excluding store director, assistant store directors, customer services manager, meat manager, deli manager, bakery manager, produce manager, managers in training, seasonal employees, and guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 19th day of December, 2001.

(SEAL) /s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board, Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

177-8520-1600

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL 876, UNITED FOOD AND COMMERCIAL WORKERS **INTERNATIONAL UNION, AFL-CIO**

LIST OF VOTERS¹³

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **December 26, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

¹³ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by: **January 2, 2002**.

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.